



ESRI, 380 New York St., Redlands, CA 92373-8100 USA • TEL 909-793-8853 • FAX 909-793-5953

Amendment No. 1
to
Master Purchase Agreement No. 2004MPA3841 (MPA)
Between
Environmental Systems Research Institute, Inc. (ESRI)
and the
State of North Dakota (State)

This Amendment No. 1 changes the MPA as follows:

1. **ArcWeb Services Subscription.** The ArcWeb Services Subscription Agreement is hereby added to the MPA, including the Special Terms and Conditions Addendum and the Use with Specific Third Party Data Addendum (G-505 12/06/04).

All other terms and conditions shall remain the same.

ACCEPTED AND AGREED:

STATE OF NORTH DAKOTA
(State)

Signature:

Sherry Neas

Printed Name:

Sherry Neas

Title:

State Procurement Manager

Date:

6/24/05

ENVIRONMENTAL SYSTEMS
RESEARCH INSTITUTE, INC.
(ESRI)

Signature:

Laura Dangermond

Printed Name:

LAURA DANGERMOND

Title:

Vice President

Date:

JUL 18 2005

ArcWeb SERVICES SUBSCRIPTION AGREEMENT

ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI"), IS WILLING TO GRANT THE USER ("SUBSCRIBER") A LICENSE TO ACCESS AND CONSUME THE ArcWeb SERVICES DESCRIBED IN THIS SUBSCRIPTION AGREEMENT ON THE CONDITION THAT SUBSCRIBER AGREE TO THE TERMS AND CONDITIONS CONTAINED HEREIN.

GENERAL TERMS AND CONDITIONS

This Subscription Agreement is entered into by and between ESRI and Subscriber. ESRI is making available to Subscriber a suite of ArcWeb Services identified below and provided hereunder (hereinafter individually or collectively referred to as the "Service(s)"). ESRI provides the Service(s) and other online resources accessible via ESRI's Web site to Subscriber, subject to the general terms and conditions of this Subscription Agreement, and any specific terms and conditions set forth in the Addendum(s) for the respective Service(s). Unless explicitly stated to the contrary, these terms and conditions, and the terms and conditions of any operative Addendum, shall govern Subscriber's use of any new feature(s) that augment or enhance the current Service(s), including the release of any new Service(s). If Subscriber is using any of the Service(s) on behalf of Subscriber's employer, Subscriber represents that Subscriber is authorized to accept these terms and conditions on behalf of Subscriber's employer.

1.0 CONFIDENTIAL INFORMATION

In order to gain access to the Service(s), the parties hereby agree to these confidentiality provisions.

1.1 "Confidential Information" as used in this Agreement is defined by North Dakota Century Code § 44-04-18.4(2)(a), and shall mean a computer software program and components of a computer software program which are subject to a copyright or a patent, and any formula, pattern, compilation, program, device, method, technique, or process supplied to any state agency, institution, department, or board that is the subject of efforts by the supplying person or organization to maintain its secrecy and that may derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons or organizations that might obtain economic value from its disclosure or use.

1.2 Subscriber acknowledges that Subscriber will obtain direct access via ESRI's Web site to certain ESRI Confidential Information, including any and all password or controlled access information provided by ESRI and ESRI databases containing confidential information of ESRI and its licensors. ESRI acknowledges that ESRI may receive Subscriber's confidential information, data, business, product, or application marketing strategies, and other valuable technical, or personal information. The receiving party shall hold such Confidential Information, which Confidential Information has been clearly marked as "Confidential" or "Proprietary" by the disclosing party, in strict confidence and may provide Information to employees within its organization only on a need-to-know basis. When applicable, ESRI may also distribute the Confidential Information to ESRI distributors and affiliates who have a need to know and actively participate in the delivery of ArcWeb Services or corresponding support to Subscriber. Subscriber may use the Confidential Information obtained from ESRI's Web site, or by any other means of disclosure, solely for the purpose of developing, maintaining, and supporting Subscriber's Web-enabled applications subject to the respective Grant of License clause, to license additional ESRI software, data, or Service(s), or to support any other activities in furtherance of this Subscription Agreement.

1.3 The receiving party shall not acquire any rights, title, or ownership in the disclosing party and/or its licensor's Information, except the limited rights to use the Information as described above.

1.4 The receiving party's obligations to maintain the confidentiality of the disclosing party's Information shall continue for three (3) years after the date of first receipt of any Information hereunder. Upon termination of this Subscription Agreement or upon the disclosing party's written request, the receiving party must cease use of Information and return or destroy all Information.

1.5 This Section 1.0, Confidential Information, shall impose no obligation upon the receiving party with respect to Information that the receiving party can establish by legally sufficient evidence (a) it possessed, or knew, prior to its receipt hereunder, or received from the disclosing party without an obligation to maintain its confidentiality; (b) the Information is or has become generally known to the public through no act or omission by the receiving party, or otherwise without violation of this Subscription Agreement; (c) the Information was obtained from a third party that had the right to disclose it without an obligation to keep such information confidential; (d) the Information was independently developed without the use of Information and without the participation of individuals who have had access to Information; or (e) the Information is obtained in response to a valid order by a court or other governmental body, as otherwise required by law or as necessary to

establish the rights of either party under this Subscription Agreement and as disclosed after adequate prior notice to the disclosing party, to afford the disclosing party the opportunity to object to or seek a protective order against the disclosure.

1.6 ESRI acknowledges that Subscriber is an agency of the State of North Dakota and is subject to North Dakota's Open Records Laws. This Section 1.0, Confidential Information, shall not require Subscriber to violate the Open Records Laws, any provision in this contract notwithstanding. Subscriber shall, in good faith, protect ESRI's confidential information to the maximum extent allowed by the Open Records Laws, including the protection for computer software programs and components thereof as allowed by North Dakota Century Code § 44-04-18.4. Subscriber will cooperate with ESRI and the North Dakota Attorney General if a request for confidential information relating to this contract is made under the Open Records Laws, and ESRI agrees to accept the determination of the North Dakota Attorney General if there is a dispute concerning confidentiality.

2.0 SUBSCRIBER'S CONDUCT REGARDING THE USE OF ESRI WEB SITE AND SERVICE(S)

2.1 Subscriber agrees not to use the Service(s) in any way for spamming or to transmit chain letters, junk e-mail, or bulk communications. Without liability, ESRI reserves the right to block, filter, or delete any such unsolicited communications described above. Subscriber agrees not to transmit through the Service(s) any content that is objectionable or upload such content onto ESRI's Web site or its servers. Subscriber agrees not to use any ESRI domain name as a pseudonymous return e-mail address for any communications that Subscriber transmits from another location or through another service. Subscriber agrees not to pretend to be someone else or spoof their identity when using the Service(s).

2.2 Subscriber agrees not to use the Service(s) for any unlawful activities not otherwise covered above, including without limitation, attempting to compromise the security of any networked account or site, operating an illegal lottery or gambling operation, stalking, or making direct threats of physical harm. In addition to the foregoing, Subscriber's use of the Service(s) shall not comprise any activities including, but not limited to, the following:

- a. Impersonate any person or entity, including, but not limited to, an ESRI official or employee, ESRI's Web site or Service(s), or falsely state or otherwise misrepresent Subscriber's affiliation with an ESRI person or entity;
- b. Forge headers or otherwise manipulate identifiers to disguise the origin of any content transmitted through the Service(s) or develop hidden pages or images (those not linked to ESRI's Web site from another accessible page);
- c. Upload, post, or otherwise transmit any content that Subscriber does not have a right to transmit to the public under any law or under contractual or fiduciary relationships (such as inside information or proprietary or confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- d. Upload, post, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software, hardware, or telecommunications equipment;
- e. Intentionally or unintentionally violate any applicable local, state, or federal law or any regulations having the force of law including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission or any national securities exchanges; or
- f. Stalk or otherwise harass another. Without liability, ESRI reserves the right to terminate this Subscription Agreement and to discontinue Subscriber's access to the Service(s) immediately upon ESRI's determination that Subscriber has engaged in any of the foregoing.

3.0 NOTICES; MODIFICATION AND TERMINATION OF SERVICE(S)

ESRI may send notices to Subscriber via e-mail, regular mail, and or through available on-line documentation. The Service(s) may also provide notices of changes to the terms and conditions of this Subscription Agreement or other matters by displaying notices or links to notices to Subscriber generally about the Service(s). ESRI reserves the right, at any time and from time to time, to modify or discontinue, temporarily or permanently, the Service(s) (or any part thereof) with or without notice. ESRI may make changes to the Service(s), including those regarding products, services, programs, and prices, at any time and without notice. Any termination of Subscriber's access to the Service(s) under any provision of this Subscription Agreement may be effected without prior notice, and ESRI may immediately deactivate or delete Subscriber's Service(s) site account and/or bar any further access to such files or the Service(s). Furthermore, ESRI will not be liable to Subscriber or any third party for any termination, modification, or suspension of the Service(s).

4.0 INTELLECTUAL PROPERTY RIGHTS

4.1 "ESRI Trademarks" means all names, marks, brands, logos, designs, trade dress, and other designations ESRI uses in connection with the Service(s), software, data, or information. Subscriber may not use or cobrand Subscriber's applications, products, or material associated with Subscriber's applications or services with any ESRI Trademarks. Subscriber agrees not

to incorporate any ESRI Trademarks into Subscriber's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

4.2 As a condition of ESRI's grant of license to use the Service(s), Subscriber shall not remove any intellectual property notices, proprietary legends, and/or U.S. Government Limited/Restrictive Rights legend contained in the Service(s), the metadata files of any of the Service(s), and any online and/or hard copy attribution page of any data or documentation delivered hereunder and shall affix any attribution notices as may be specified therein.

4.3 Nothing on this Service(s) Web site shall be construed as conferring any license under any of ESRI's or any third party provider's intellectual property rights, whether by estoppel, implication, or otherwise. Subscriber acknowledges sole responsibility for obtaining any such licenses.

5.0 DISCLAIMER OF WARRANTIES

5.1 SUBSCRIBER'S USE OF THE SERVICE(S) IS AT SUBSCRIBER'S SOLE RISK. THE SERVICE(S) AND CONTENT ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. UNLESS OTHERWISE EXPLICITLY STATED, THE SERVICE(S) OR CONTENT ON ESRI'S WEB SITE IS NOT INTENDED FOR USE IN ANY MISSION-CRITICAL APPLICATIONS. ESRI DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. ESRI MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS, OR GUARANTIES AS TO THE QUALITY, SUITABILITY, TRUTH, ACCURACY, OR COMPLETENESS OF ANY OF THE SERVICE(S) OR CONTENT CONTAINED ON ESRI'S WEB SITE.

5.2 THE SERVICE(S) OR CONTENT HAS BEEN OBTAINED FROM SOURCES BELIEVED TO BE RELIABLE, BUT ITS ACCURACY AND COMPLETENESS ARE NOT GUARANTEED. THE SERVICE(S) AND CONTENT MAY CONTAIN SOME NONCONFORMITIES, DEFECTS, INACCURACIES, ERRORS, OR OMISSIONS. ESRI MAKES NO WARRANTY OR CONDITION THAT (a) THE SERVICE(S) WILL MEET SUBSCRIBER'S REQUIREMENTS; (b) THE SERVICE(S) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (c) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE(S) WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY SERVICE(S), DATA OR INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY SUBSCRIBER THROUGH THE SERVICE(S) WILL MEET SUBSCRIBER'S EXPECTATIONS; OR THAT (e) ANY ERRORS IN THE SERVICE(S), SOFTWARE, DATA, OR INFORMATION WILL BE CORRECTED.

5.3 ANY SOFTWARE, DATA, OR INFORMATION DELIVERED PURSUANT TO THIS SUBSCRIPTION AGREEMENT OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE(S) IS DONE AT SUBSCRIBER'S OWN DISCRETION AND RISK AND SUBSCRIBER IS SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH SOFTWARE, DATA, OR INFORMATION INCLUDING ANY DAMAGES RESULTING FROM COMPUTER VIRUSES OR OTHER MALICIOUS COMPUTER CODE.

5.4 BOTH PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE INTERNET IS A NETWORK OF PRIVATE AND PUBLIC NETWORKS, AND THAT (a) THE INTERNET IS NOT A SECURE INFRASTRUCTURE, (b) NEITHER PARTY HAS CONTROL OVER THE INTERNET, AND (c) THAT NEITHER PARTY IS LIABLE FOR DAMAGES UNDER ANY THEORY OF LAW RELATED TO THE DISCONTINUANCE OF OPERATION OF ANY PORTION OF THE INTERNET OR POSSIBLE REGULATION OF THE INTERNET THAT MIGHT RESTRICT OR PROHIBIT THE OPERATION OF THE SERVICE(S).

5.5 THE SERVICE(S) OR CONTENT DELIVERED HEREUNDER ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE FOR USE FOR INSURANCE UNDERWRITING, OR WITH CRITICAL HEALTH AND SAFETY OR ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS THAT REQUIRE FAIL SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION, OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, EMERGENCY RESPONSE, TERRORISM PREVENTION OR RESPONSE, LIFE SUPPORT, OR WEAPONS SYSTEMS ("HIGH RISK ACTIVITIES"). ESRI SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR USE IN HIGH RISK ACTIVITIES.

5.6 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY SUBSCRIBER FROM ESRI OR THROUGH OR FROM THE SERVICE(S) WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THE TERMS OF THIS SUBSCRIPTION AGREEMENT.

6.0 LIMITATION OF LIABILITY

6.1 IN NO EVENT SHALL ESRI OR ITS THIRD PARTY LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, REVENUE, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED ORDERS, OR OTHER ECONOMIC ADVANTAGE (EVEN IF ESRI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN CONTRACT (INCLUDING FUNDAMENTAL BREACH), TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, ARISING OUT OF OR RELATED TO THE FOLLOWING: (a) THE USE OF, OR THE INABILITY TO USE, THE SERVICE(S); (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICE(S) RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICE(S) PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE(S); (c) UNAUTHORIZED ACCESS TO, OR ALTERATION OF, SUBSCRIBER'S TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE(S); OR (e) ANY OTHER MATTER RELATING TO THE SERVICE(S) INCLUDING CONTENT SUBSCRIBER MAY DOWNLOAD, USE, MODIFY, OR DISTRIBUTE FROM ESRI'S WEB SITE.

6.2 SUBSCRIBER HAS SOLE RESPONSIBILITY FOR ADEQUATE PROTECTION AND BACKUP OF ANY DATA AND/OR ANY EQUIPMENT USED IN CONNECTION WITH THE SERVICE(S) AND WILL NOT MAKE A CLAIM AGAINST ESRI FOR LOST DATA, RERUN TIME, INACCURATE OUTPUT, WORK DELAYS, OR LOST PROFITS RESULTING FROM THE USE OF THE SERVICE(S).

6.3 Subscriber agree that the limitation of liability and disclaimers set forth in this Subscription Agreement will apply regardless of whether Subscriber has accepted any Service(s), software, data, or documents delivered by ESRI. Subscriber agree that ESRI set its prices and entered into this Subscription Agreement in reliance upon the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of bargain between the parties.

7.0 INDEMNITY

ESRI is committed to respecting others' intellectual property rights and asks that Subscriber do the same. ESRI may, at its sole discretion, terminate the accounts or access rights of Subscriber's who misappropriate, infringe, or otherwise violate a third party's intellectual property rights.

8.0 ESRI'S PRIVACY POLICY

ESRI respects Subscriber's desire for privacy. ESRI's Privacy Policy can be found at www.esri.com/company/privacy.html. By using the ESRI Web site, Subscriber is consenting to the processing of Subscriber's registration Information by ESRI, by the data and/or service provider, and, if applicable, by any authorized ESRI Distributor responsible for providing technical support to Subscriber and consenting to the terms of ESRI's Privacy Policy. If ESRI decides to change that policy, it will post the revised policy prominently on ESRI's Web site or otherwise bring it to Subscriber's attention, so that Subscriber is always aware of what ESRI does with Subscriber's registration Information.

9.0 GENERAL INFORMATION

9.1 This Subscription Agreement constitutes the entire agreement between Subscriber and ESRI and governs Subscriber's use of the Service(s), superseding any prior agreements between Subscriber and ESRI (including, but not limited to, any prior versions of the Subscription Agreement). Also, Subscriber may be subject to additional Specific Terms and Conditions that may apply when Subscriber accesses and uses other Service(s), ESRI software, third party content, or third party software. Subscriber may not assign or otherwise transfer the terms and conditions nor any rights granted herein. Sections 1.0, 4.0, 5.0, 6.0, 7.0, and 9.0 shall survive termination of this Subscription Agreement.

**ADDENDUM TO THE
ArcWeb SERVICES SUBSCRIPTION AGREEMENT
SPECIAL TERMS AND CONDITIONS
FOR USE WITH ArcWeb SERVICES**

1.0 ACCEPTANCE OF TERMS

1.1 UNLESS SUPERSEDED BY A SIGNED LICENSE AGREEMENT BETWEEN THE USER ("YOU") AND ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI"), ESRI IS WILLING TO GRANT YOU ACCESS AND LICENSE THE SERVICES DESCRIBED HEREIN TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED HEREIN. PLEASE READ THIS SUPPLEMENTAL ADDENDUM ("ADDENDUM") FOR ESRI ArcWeb SERVICES CAREFULLY BEFORE YOU ACCEPT THIS ADDENDUM. IF YOU DO NOT AGREE TO ALL OF THE TERMS IN THIS ADDENDUM, YOU ARE NOT PERMITTED TO USE THESE ArcWeb SERVICES. YOUR ACCESS TO THE SERVICE(S) WILL NOT BEGIN UNTIL YOU HAVE MANIFESTED YOUR ASSENT TO THE TERMS AND CONDITIONS OF THE ESRI SUBSCRIPTION AGREEMENT, AND THIS OR ANY OTHER OPERATIVE ADDENDUM BY CLICKING "I accept" BELOW. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS AS STATED, THEN ESRI IS UNWILLING TO LICENSE THE SERVICE(S) TO YOU AND YOU SHOULD CLICK "I do not accept" BELOW, IN WHICH EVENT, YOU WILL NOT GAIN ACCESS TO THE SERVICE(S).

1.2 This Addendum is supplemental to the ArcWeb Services Subscription Agreement ("Subscription Agreement") to which it forms an Attachment, and is entered into by and between ESRI and You. If You are using any of the services identified below and provided hereunder (the "Service[s]") on behalf of Your employer, You represent that You are authorized to accept these terms on Your employer's behalf. ESRI provides the Service(s) and other online resources accessible via its Web site to You, subject to these terms. Except as may be specifically supplemented by this Addendum, and any other operative Addendum, all terms and conditions being previously defined in the Subscription Agreement shall have the same meaning in this Addendum. Unless explicitly stated otherwise, these terms will govern Your use of any new features that augment or enhance the current Service(s) including the release of new ArcWeb Service(s).

2.0 DESCRIPTION OF SERVICE

2.1 ArcWeb Services. ESRI, through its Web site, provides You with access to a rich collection of ESRI-owned or ESRI-licensed data or documentation, features, functions, modular components, and applications that can be published and accessed over the Web. Access to the Service(s) listed below will be provided to You via standard Web protocols.

- **ArcWeb for Developers.** Developers can access the Service(s) through industry standard APIs and may be used as part of Your value added Web-enabled application(s).
- **ArcWeb for ArcGIS Users.** End Users can access the Service(s) through the ArcWeb Toolbar and other ESRI software products including ArcExplorer.

2.2 ESRI may make improvements and/or changes in its offerings of the Service(s), software, data, information, or prices described in this ESRI Web site at any time without notice. Changes are periodically made to the Web site and to the Service(s). ESRI may amend the ArcWeb Services Subscription Agreement or this or any other operative Addendum at any time by posting the amended terms on this site.

Updates to the Service(s) described in section 2.1 are immediately made available to You upon their release to commercial availability as described in the on-line documentation and are provided to You at no additional charge.

3.0 LICENSE

- a. Grant for ArcWeb Services for Developers.** You are granted a nonexclusive, nontransferable, limited license to access the Service(s) to which You subscribe and for the specified number of credits. Such license includes the right to access the Service(s) made available on the Web site and to use the Service(s) to develop and integrate Service(s)-generated functionality into Web-enabled applications. The Service(s) shall be used solely by You for Your own internal business purposes, including Internet and extranet access, so long as the business purposes do not include generation of revenue from sales of Web-enabled applications developed by You using the Service(s). Certain Service(s) may be licensed to You for commercial, revenue-generating purposes and will require additional terms and conditions (Addendum) that You must agree to prior to Your accessing those Service(s) in a commercial, revenue-generating application. In the event You create any Internet or extranet Web-enabled applications, You agree to have an enforceable agreement in

place with any customer or end user of such Web-enabled application that contains terms and conditions substantially similar to the terms and conditions of this Agreement and any Addendum(s) thereto. Additional ESRI software, data, or information not included in the Service(s) are available to You for use in conjunction with the Service(s), subject to a separate ESRI license agreement. You may require third party owned and provided data that will require additional terms and conditions (Addendum) that You must agree to prior to Your accessing such data.

- b. **Grant for ArcWeb Services for ArcGIS Users.** You are granted a nonexclusive, nontransferable, limited license to access the Service(s), and updates, to which You subscribe for the specified number of credits. Such license includes the right to access the Service(s) made available on the Web and accessed through the ArcWeb Toolbar. The Service(s) shall be used solely by You and solely in conjunction with ESRI software, data, or documentation and for Your own internal business purposes only. You may require third party owned and provided data that will require additional terms and conditions (Addendum) that You must agree to prior to Your accessing such data. ESRI software, data, or documentation not included in the Service(s) is available to You for use in conjunction with the Service(s), subject to a separate ESRI license agreement.
- c. **Limitations.** You may not copy, download, store, except You may download and store geocoded results when utilizing the Service known as Address Manager, publish, transmit, transfer, sell, or otherwise use the Service(s) except as expressly permitted by these terms. You may not sell, rent, lease, lend, time-share, assign, or transfer any right to use the Service(s) to any third party without the prior express written permission of ESRI. Except for Your use of the Service(s) in conjunction with ArcGIS when you may download and store the results derived from Your use of the Service(s), You may not store the results derived from your use of the Service(s) for the purpose of creating a value-added Web-enabled application that You intend to resell, license, or otherwise distribute to third parties. You may not reverse engineer, decompile, or disassemble the Service(s), except to the extent that such activity is permitted by applicable law notwithstanding this restriction, in order to protect ESRI or its supplier(s) trade secrets and proprietary information contained in the Service(s). You may not create derivative Service(s) or add value to the Service(s) and thereafter resell or otherwise distribute the Service(s) as Your own services. You may not use the Service(s) and reformat and display the Service(s) in an attempt to mirror and/or make commercial use of the ESRI Web site. All rights not specifically granted in this Article 3.0, License are reserved to ESRI.

4.0 MISCELLANEOUS

4.1 North Dakota law governs any action related to the terms of this Addendum. No choice of law rules of any jurisdiction apply. The parties specifically disclaim the U.N. Convention on Contracts for the International Sale of Goods.

4.2 The terms of this Addendum, together with the terms of the ArcWeb Services Subscription Agreement and any other operative Addendum, represent the entire understanding relating to the use of the ESRI Web site and ArcWeb Services and prevail over any prior or contemporaneous, conflicting, or additional communications.



Addendum
to the
ArcWeb Services Subscription Agreement
For Use with Specific Third Party Data

This Addendum ("Addendum") is supplemental to the ArcWeb Services Subscription Agreement to which it forms an Attachment and is hereby incorporated by reference herein in its entirety.

UNLESS SUPERSEDED BY A SIGNED LICENSE AGREEMENT BETWEEN THE USER ("YOU") AND ENVIRONMENTAL SYSTEMS RESEARCH INSTITUTE, INC. ("ESRI"), ESRI IS WILLING TO GRANT YOU ACCESS AND LICENSE THE SERVICE(S) DESCRIBED HEREIN TO YOU ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED HEREIN. PLEASE READ THIS ADDENDUM FOR ArcWeb SERVICES CAREFULLY BEFORE YOU ACCEPT THE ADDENDUM. IF YOU DO NOT AGREE TO ALL OF THE TERMS IN THIS ADDENDUM, YOU ARE NOT PERMITTED TO USE THESE ArcWeb SERVICES. YOUR ACCESS TO THE SERVICE(S) WILL NOT BEGIN UNTIL YOU HAVE MANIFESTED YOUR ASSENT TO THE TERMS AND CONDITIONS OF THIS ADDENDUM BY CLICKING "I accept" BELOW. IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS AS STATED, THEN ESRI IS UNWILLING TO LICENSE THE SERVICE(S) TO YOU AND YOU SHOULD CLICK "I do not accept" BELOW, IN WHICH EVENT, YOU WILL NOT GAIN ACCESS TO THE SERVICE(S).

WHEREAS, ESRI and You have entered into an ArcWeb Services Subscription Agreement ("Subscription Agreement") that sets forth the General Terms and Conditions for Your access to certain Services currently offered by ESRI through its Web site, and an Addendum ("Addendum") that set forth Special Terms and Conditions regarding Your access to such Service(s) currently offered; and

WHEREAS, You desire to access certain Service(s) offered by ESRI through its Web site that includes data sets owned by certain Third Party suppliers ("Third Party Data"); and

WHEREAS, ESRI agrees to make available to You certain Third Party Data available through its Web site.

NOW, THEREFORE, ESRI and You supplementally agree as follows:

1. Except as may be specifically supplemented by this Addendum, all terms and conditions being previously defined in the Subscription Agreement shall have the same meaning in this Addendum.
2. **GDT Data.** If You utilize Third Party Data owned and provided by Geographic Data Technology, Inc. (GDT), as part of your access to the Service(s), then Your use of GDT Data shall be subject to the following terms and conditions:

Article 3.0 (c), Limitations of the Addendum, is hereby supplemented to include the following:

- i. The use of GDT Data or its derivatives is strictly prohibited in any On-board Navigation System. For the purposes of this Addendum, an "On-board Navigation System" includes at least the following components installed in or on a vehicle: (a) storage medium to store at least a portion of the GDT Data or a certain database derived there from, (b) a gyroscope, and (c) a device to detect the wheel rotation of a vehicle.
- ii. The use of GDT Data for routing capabilities is limited to a driving directions service that enables You to generate multipoint driving directions between user-defined locations utilizing ESRI software accessing GDT Data.
- iii. The use of the GDT Data or its derivatives is strictly prohibited in the use of Automatic Vehicle Location (AVL). For the purposes of this Addendum, an AVL shall mean the service of locating a mobile or stationary unit with technology such as a Global Positioning System (GPS), triangulation, or a gyroscope to automatically estimate a specific point, such as a latitude/longitude, and delivering the GPS derived information and/or non-GPS derived information.

3. If You utilize Third Party Data owned and provided by GDT and You are accessing ArcWeb Services for Address Manager, Your use of GDT Data shall be subject to the following terms and conditions:

Article 3.0 (c) Limitations of the Addendum, is hereby supplemented to include the following:

- i. Geocodes utilizing the GDT Data may be delivered in single or batch mode when associated with the Service(s).
- ii. GDT Data utilized in the Service(s) may be used for the purpose of returning list of geocodes.
- iii. Geocoded results may be downloaded and stored onto Your computer for Your internal business use and only when utilizing the Service known as Address Manager.

4. **TANA Data.** If Your access to ArcWeb Services includes Third Party Data owned and provided by TeleAtlas North America, Inc. (TANA), Your use of TANA Data shall be subject to the following terms and conditions:

A. Article 3.0 (a and b), Grant of the Addendum, is hereby supplemented to include the following:

- (i) Except as may otherwise be agreed to by TANA, Your license is for internal business or personal use only and not for transfer, distribution, or disclosure to third parties or use for the benefit of third parties.
- (ii) Your license to use is limited to the authorized number of concurrent users, subscribers, or transactions as applicable.

B. Article 3.0 (c), Limitations of the Addendum, is hereby supplemented to include the following:

- (i) Your use of the Service(s) is limited other than while connected to ESRI's Server; other than that end user may use the results of the Service(s) (e.g., batch geocoding results) for internal business or personal use only.
- (ii) You may not pass title to or any ownership interest in the TANA Data as contained in the Service(s) from passing to any end user, Developer, or any other third party.
- (iii) You may not derive or attempt to derive the structure of the TANA Data as contained in the Service(s).
- (iv) Except as may be permitted herein, You may not duplicate (except for a single archival copy if You are a Developer), reproduce, disclose, publish, distribute, or transfer any TANA Data as contained in the Service(s).
- (v) You may not remove or obscure any TANA copyright, trademark notice, or restrictive legend.
- (vi) If You are an end user, You may not modify or create any derivative works of the TANA Data or the Service(s), except You may use the results of the Service(s) (e.g., the shapefile of a route, but not the underlying road network) for internal business or personal use only.

C. Article 9.0, General Information of the Subscription Agreement, is hereby supplemented to include the following:

1. TANA is a third party beneficiary of ESRI's rights under this Subscription Agreement with You in order to enforce its intellectual property rights, but is not a party thereto and shall have no obligations thereunder.
2. You acknowledge that the TANA Data as contained in the Service(s) includes confidential and proprietary information and materials and may include trade secrets, and that You agree to hold the TANA Data as contained in the Service(s) in confidence and in trust.
3. **U.S. GOVERNMENT RIGHTS.** If You are an agency, department, or other entity of the United States Government, or funded in whole or in part by the United States Government, then use, duplication, reproduction, release, modification, disclosure, or transfer of this commercial product and accompanying documentation, is restricted in accordance with FAR 12.212 and DFARS 227.7202, and by a license agreement. Contractor/Manufacturer is Tele Atlas North America, Inc., 1605 Adams Drive, Menlo Park, California 94025; Telephone: 650-328-3825. The TANA Data is ©1984–2003 by Tele Atlas North America, Inc., and Tele Atlas N.V. ALL RIGHTS RESERVED. For purpose of any public disclosure provision under any federal, state, or local law, it is agreed that the Products are a trade secret and a proprietary commercial product and not subject to disclosure.
4. If You are an agency, department, or other entity of any State government, the United States Government or any other public entity, or funded in whole or in part by the United States Government,

then You hereby agree to protect the TANA Data as contained in the Service(s) from public disclosure and to consider the TANA Data as contained in the Service(s) exempt from any statute, law, regulation, or code, including any Sunshine Act, Public Records Act, Freedom of Information Act, or equivalent, which permits public access and/or reproduction or use of the Products. In the event such exemption is challenged under any such laws, this Addendum to the Subscription Agreement shall be considered breached and any and all right to retain any copies or to use any of the TANA Data as contained in the Authorized Derivative Services shall be terminated and considered immediately null and void. Any copies of the TANA Data as contained in the Authorized Service(s) held by You shall immediately be destroyed. If any court of competent jurisdiction considers this clause void and unenforceable, in whole or in part, for any reason, this Addendum to the Subscription Agreement shall be considered terminated and null and void, in its entirety, and any and all copies of the TANA Data on the Service(s) shall immediately be destroyed.

D. If Your access to the Service(s) requests TANA European Data, then the following conditions shall apply:

The following terms shall apply if You access the TANA GB Data:

- a. All warranties of Ordnance Survey, whether express or implied, including, but not limited to, the implied warranties of noninfringement, merchantability, completeness, accuracy, and fitness for a particular purpose are hereby disclaimed and shall not apply. You acknowledge that Ordnance Survey makes no warranty and gives no representation that the TANA GB Data is complete, accurate, and/or up to date and is an essential condition of the Subscription Agreement and this Addendum and that You accept the TANA GB Data on that basis.
- b. In no event shall ESRI, Ordnance Survey, or TANA have any liability to You with respect to Your use of the TANA GB Data.
- c. You may not use the TANA GB Data in any printed, published form that results in products to be distributed freely or sold to the public without the prior permission of Ordnance Survey.
- d. You shall indemnify Ordnance Survey from and against all claims, demands, or actions, irrespective of the nature of the cause of the claim, demand, or action alleging loss, costs, expenses, damages, or injuries (including injuries resulting from death) arising out of the use of the TANA GB Data.

E. The following term shall apply if You access the TANA Data of Denmark:

You are prohibited from using the TANA Data of Denmark to create maps within telephone books, telephone books, or other products similar to telephone books (e.g., directories), including such products in digital form.

F. The following term shall apply if You access the TANA Data of Norway:

You are prohibited from using the TANA Data of Norway to create general purpose printed or digital maps, which are similar to the basic national products of the Norwegian Mapping Authority. (Any Derivative Product of the TANA Data of Norway shall be regarded as similar to the basic national products of the Norwegian Mapping Authority if such Derivative Product has a regional or national coverage, and at the same time has a content, scale, and format similar to the basic national products of the Norwegian Mapping Authority.)

G. If You are a Developer providing Web-enabled applications for your customers and You are accessing TANA Data, the following terms shall apply:

1. You are granted the right to use the Service(s) only for the purpose of creating Derivative Product(s) that shall not remove or disengage the Data from the Service(s), shall access the Data on ESRI's servers only, and for no other purpose unless otherwise agreed to by TANA.
2. You shall notify ESRI immediately if You learn of any misappropriation, unauthorized use, or public disclosure of the Service(s) or TANA Data and You shall cooperate with ESRI's efforts to prevent such misappropriation, misuse, or public disclosure.
3. If the Service(s), TANA Data, or any portion thereof are modified, merged, or combined into or with any software, hardware, other programs, or other data, such modifications, mergers, or combinations

shall continue to be subject to the provisions of this Subscription Agreement , and TANA retains ownership of its spatial map database contained in the Service(s) or Data and all such portions.

4. In no event may You translate and/or convert the Data into another data format.
 5. In no event shall You (i) extract data from the TANA Data or the Service(s) in any digital, vector-based form, (ii) deliver any TANA Data in its original form to any third party, but may only combine the TANA Data with substantial added value to create the authorized ArcWeb Service(s), (iii) use the TANA Data to provide any competitive information about TANA or the TANA Data to any third parties, (iv) create Derivative Products that compete with the TANA Data, or (v) create Derivative Products other than the specific authorized ArcWeb Service(s).
 6. You may not provide access to the Data other than through the Service(s).
 7. You agree that attributes in the TANA Data of (i) Functional Road Class, (ii) Speed Category, (iii) Access Restrictions and Conditions; (iv) Internal Intersections Links, (v) Maneuvers, (vi) Indescribable Links, (vii) Special Explication, and (viii) House Number Ranges, shall be used by the Service(s) for calculation purposes only, and such attributes may not be displayed or otherwise disclosed to end users, consumers, or any third party, provided, however, that specific house numbers may be derived from House Number Ranges and displayed to end users and/or consumers to identify correlating locations satisfying search queries of such end users and/or consumers; and (ix) TANA Data attributes of Sign Text may only be displayed or otherwise revealed in connection with a specific route for which driving directions and/or route guidance is provided to an end user and/or consumer.
 8. You may not disclose, sublicense, distribute, transmit, or in any manner otherwise provide the TANA Data to Geographic Data Technology, Inc. (GDT), Geographic Data Technology Canada, Inc. (GDT Canada), and Navigation Technologies, Inc. (NavTech).
 9. This Agreement may terminate twelve months after any termination of the ESRI/TANA Agreement concerning the use of the TANA Data hereunder.
 10. ESRI reserves the right to terminate this Subscription Agreement if You violate or breach any material term of this Agreement.
 11. You must destroy (and provide certification of such destruction) or return to ESRI all copies of the TANA Data that You are in the possession or control of upon termination or expiration of this Subscription Agreement.
5. **Meteorlogix Data.** If Your access to Service(s) includes Third Party Data owned and provided by Meteorlogix, LLC (Meteorlogix), then Your use of Meteorlogix Data shall be subject to the following terms and conditions:

Article 3.0(c), Limitations of the Addendum , is hereby supplemented to include the following:

You may not store Meteorlogix Data for any amount of time exceeding a five (5) day period from the date of receipt of such Data.

6. **NAVTEQ Data.** If Your access to Service(s) includes Third Party Data owned and provided by NAVTEQ North America LLC (NAVTEQ), then Your use of NAVTEQ Data shall be subject to the following terms and conditions:

General Terms

In no event shall NAVTEQ Data be used to provide dynamic or real-time route guidance directions and/or alerts, including without limitation, derived locations pursuant to a request for roadside assistance, automatic collision notification and reporting triggered by an accident, and notification that an asset or person has breached the boundary or perimeter of a defined geographic area, or Route Optimization through the Service(s) or otherwise. For the purposes of this Addendum Route Optimization means calculating the order of destinations, way points and or routes thereto for people, devices, and or transportation means, based on availability, positioning and or routing of at least one other person, device or transportation.

In no event shall the Points of Interest data (i.e., business listings) included in any NAVTEQ Data be used for sales lead generation where sales lead generation mean an application specifically designed to generate sales lead information in the form of ASCII or other text-formatted lists of category-specific business listings which (i) originate from the NAVTEQ Data and (ii) include complete mailing addresses for each business. Sales lead generation shall not include any application permitted hereunder where mailing address or phone numbers are provided in bit map graphical images or in another no-text form.

Canada

The following provisions apply to NAVTECH Data for the coverage area of Canada, which may include or reflect data from third party licensors, including Her Majesty the Queen in Right of Canada ("Third Party Data"):

1. Disclaimer and Limitation: You agree that use of the Third Party Data is subject to the following provisions:
 - (A) **DISCLAIMER: THE THIRD PARTY DATA IS LICENSED ON AN "AS IS" BASIS. THE LICENSORS OF SUCH DATA, INCLUDING HER MAJESTY THE QUEEN, MAKE NO GUARANTEES, REPRESENTATIONS OR WARRANTIES RESPECTING SUCH DATA, EITHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, EFFECTIVENESS, COMPLETENESS, ACCURACY OR FITNESS FOR A PARTICULAR PURPOSE.**
 - (B) **LIMITATION ON LIABILITY: THE THIRD PARTY DATA LICENSORS, INCLUDING HER MAJESTY THE QUEEN, SHALL NOT BE LIABLE: (i) IN RESPECT OF ANY CLAIM, DEMAND OR ACTION, IRRESPECTIVE OF THE NATURE OF THE CAUSE OF THE CLAIM, DEMAND OR ACTION ALLEGING ANY LOSS, INJURY OR DAMAGES, DIRECT OR INDIRECT, WHICH MAY RESULT FROM THE USE OR POSSESSION OF SUCH DATA; OR (ii) IN ANY WAY FOR LOSS OF REVENUES OR CONTRACTS, OR ANY OTHER CONSEQUENTIAL LOSS OF ANY KIND RESULTING FROM ANY DEFECT IN THE DATA.**
2. Copyright Notice: In connection with each copy of all or any portion of the NAVTECH Data for the coverage area of Canada, You shall affix in a conspicuous manner the following copyright notice on at least one of:
(i) the label for the storage media of the copy; (ii) the packaging for the copy; or (iii) other materials such as user manuals or end user license agreements: **"This data includes information taken with permission from Canadian authorities, including © Her Majesty the Queen in Right of Canada, © Queen's Printer for Ontario."**
3. You shall indemnify and save harmless the licensors, including Her Majesty the queen and the Minister, and their officers, employees and agents from and against any claim, demand or action, irrespective of the nature of the cause of the claim, demand or action, alleging loss, costs, expenses, damages or injuries (including injuries resulting in death) arising out of Your use or possession of the Third Party Data.

European Supplier Terms

The following provisions apply to the NAVTECH Data for and to the extent indicated respecting any territory including any country of Europe, which may include or reflect data from third party licensors:

1. OS Enforcement. With respect to NAVTECH Data for the territory of Great Britain, You acknowledge and agree that the Ordnance Survey ("OS") may bring a direct action against You to enforce compliance with the OS copyright notice (see Section 3 below).
2. Traffic Codes. The following provisions apply to the grant of license for use of NAVTECH Data that includes Traffic Codes.
 - A. General Restrictions Applicable to Traffic Codes. You acknowledge and agree that in certain countries of the Territory of Europe, You shall be responsible for obtaining rights directly from third party RDS-TMC code providers to use the Traffic Codes in the Data and to deliver to end users information, data, applications, products and/or services in any way derived from or based on such Traffic Codes.
 - B. Display of Third Party Rights Legend for Belgium. ESRI shall, for each provision of information, data, applications, products and/or services that uses Traffic Codes for Belgium, provide the following notice to the End User: "Traffic Information is provided by the Ministerie van de Vlaamse Gemeenschap and the Ministère de l'Équipement et des Transports."

3. **Third Party Notices.** Any and all copies of the NAVTECH Data and/or packaging shall include the respective Third Party Notices set forth below and used as described below corresponding to the territory (or portion thereof) included in such copy:

<u>Territory</u>	<u>Notice</u>
France	The following notice must appear on all copies of the Data, and may also appear on packaging: "source: G��oroute�� IGN France & BD Carto�� IGN France"
Germany	"Die Grundlagendaten wurden mit Genehmigung der zust��ndigen Beh��rden entnommen" or "Die Grundlagendaten wurden mit Genehmigung der zustaendigen Behoerden entnommen."
Great Britain	– <u>Until 12/31/05:</u> "Based on Ordnance Survey electronic data and used with the permission of the Controller of Her Majesty's Stationary Office �� Crown Copyright, 1995." – <u>After 12/31/05:</u> "Based upon Crown Copyright material."
Italy	"La Banca Dati Italiana �� stata prodotta usando quale riferimento anche cartografia numerica ed al tratto prodatta e fornita dalla Regione Toscana."
Norway	"Copyright �� 2000; Norwegian Mapping Authority"
Portugal	"Source: IgeoE–Portugal"
Spain	"Informaci��n geogr��fica propiedad del CNIG"
Sweden	"Based upon electronic data �� National Land Survey Sweden."
Switzerland	"Topografische Grundlage: �� Bundesamt f��r Landestopographie."

7. **MDS Data.** If Your access to Service(s) includes Third Party Data owned and provided by MapData Sciences Pty Ltd. (MDS), Your use of the MDS Data shall be subject to the following terms and conditions:
- A. ESRI reserves the right to, upon ten (10) days notice to You, suspend or terminate Service(s) that include any such MDS data.
 - B. Copyright notice: Copyright in all of the mapping based materials on this website and any associated websites, including but not limited to information, artwork, text, maps, images, driving directions, and pictures, derived from the Australian mapping data, (herein referred to as "Content"), is either owned by or administered by MapData Sciences Pty Ltd ("MDS") ACN 45 053 437 282 (for the purpose of this notice MDS shall include MDS, its employees, servants, and agents) for and on behalf of variously, the following:
 - MapData Sciences Pty Ltd;
 - The Public Sector Mapping Agencies (PSMA)
 - State Governments of New South Wales, Victoria, Queensland, Tasmania, South Australia, and Western Australia;
 - The Territory Governments of Australian Capital Territory and Northern Territory;
 - Land Information New Zealand
 - Statistics New Zealand
 - C. MDS does not warrant or make any representations regarding the accuracy, reliability, completeness, or correctness in relation to the Content presented on this website or any associated websites. You accept sole responsibility and risk associated with the use and results of information contained in this website or any associated websites.
 - D. In no event shall MDS be liable for any loss or damages, including special, indirect, or consequential damages, however caused which may arise from or in connection with the use or performance of MDS Data or Materials used for this service or Content contained on this website or any associated website. Further, the State,

Territory, and Commonwealth Governments of Australia and PSMA Australia Ltd, do not make any representations or warranties about the Data acquired hereunder accuracy, reliability, completeness or suitability for any particular purpose and, to the extent permitted by law (but subject to any liability which cannot be excluded under the Trade Practices Act 1974 and equivalent State and Territory legislation), the above government bodies disclaim all responsibility and all liability (including without limitation, liability in negligence) for all expenses, losses, damages (including indirect or consequential damage) and costs which might be incurred as a result of the Data acquired hereunder being accurate or complete in any way and for any reason.

- E. If you cannot comply with or do not agree with all of the terms and conditions of the above disclaimers, do not use this website or access MDS Data.
- 8. **ESRI Italia.** If Your access to Service(s) includes Third Party Data owned and provided by ESRI Italia S.p.A., Your use of ESRI Italia data in conjunction with Service(s) known as Map Image, Address Finder, and Query is strictly prohibited in any Personal and In-Vehicle Navigation systems that use Global Positioning Systems (GPS) real time data.
- 9. Except as may be specifically modified by this Addendum, all terms and conditions of the Subscription Agreement and any other operative Addendum remain in full force and effect. The Subscription Agreement and this Addendum and any other operative Addendum constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements or representations, written or oral, concerning the subject matter or the Subscription Agreement or this Addendum or any other operative Addendum.